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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

12 CR 859

6 LUIS ARTEAGA, JR.,

7 Defendant.
-----x

8 New York, N.Y.
9 May 30, 2014
10 11:47 A.M.

12 Before:

13 HON. VICTOR MARRERO,

14 District Judge

15 APPEARANCES

16 PREET BHARARA
17 United States Attorney for the
Southern District of New York
18 TIMOTHY TURNER HOWARD
Assistant United States Attorney

19 JOSHUA DRATEL
20 Attorney for Defendant

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1 (In open court; defendant present)

2 THE COURT: Good morning. This is the proceeding in
3 the matter of United States v. Arteaga. It's docket number 12
4 CR 0859, scheduled as the sentencing of the defendant in the
5 matter.

6 Counsel, please enter your appearances for the record.

7 MR. HOWARD: Tim Howard, for the government.

8 THE COURT: All right.

9 MR. DRATEL: Good morning, your Honor, Joshua Dratel
10 for Mr. Arteaga, seated beside me.

11 THE COURT: Good morning. Thank you.

12 I have read and reviewed the presentence investigation
13 report dated January 23, 2014 prepared in connection with
14 today's sentencing of Mr. Arteaga. I have also read the
15 memorandum from defense counsel dated May 23rd, 2014.

16 Mr. Howard, has the government read and reviewed the
17 presentence report?

18 MR. HOWARD: Yes, and the government has no objection.

19 THE COURT: Mr. Dratel, have you read and reviewed the
20 presentence report.

21 MR. DRATEL: Yes. It was brought over with Mr.
22 Arteaga and we have no objections, beyond the ones that we have
23 submitted. I don't think there are any outstanding.

24 THE COURT: Thank you.

25 Mr. Arteaga, please rise.

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1 Have you read and reviewed the presentence report?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have you discussed it with your attorney?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Thank you, you may be seated.

6 On October 9, 2013, Mr. Arteaga pled guilty before
7 magistrate Judge Gorenstein to count one of the superseding
8 indictment, 12 CR 0859, which charged him under 21 USC Sections
9 841(b)(1)(B) and 846 with conspiracy to distribute and possess
10 with intent to distribute cocaine.

11 The Court reviewed the transcript of the defendant's
12 guilty plea and, by order dated November 8, 2013, accepted the
13 plea as having been entered knowingly and voluntarily and with
14 a factual basis.

15 Mr. Howard, does the government have any additional
16 comments for the Court's consideration?

17 MR. HOWARD: Yes, your Honor.

18 As a threshold matter regarding the discrepancy in the
19 guidelines range that was calculated by the probation
20 department and on the plea agreement, as Mr. Dratel points out
21 in his submission, the fact that the defendant served 4 months
22 in prison for his state offense did not appear on his rap
23 sheet, and was revealed during the presentence investigation.
24 The government believes that the calculation as set forth by
25 the probation department is correct, that he is in criminal

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1 history category III, offense level 29.

2 That being said, it is now the policy of the
3 Department of Justice that a two-level variance should be
4 granted in light of proposed amendments to the drug quantity
5 tables in the guidelines. It's the government position that a
6 reasonable sentence would be at criminal history category III,
7 at offense 27, which is the equivalent to 87 to 108 months
8 imprisonment, lower than the stipulated guidelines range of 108
9 to 135 in the plea agreement itself.

10 Just real briefly, we believe a sentence within that
11 range of 87 to 108 months is reasonable for just punishment,
12 respect for the law, and deterrence. This defendant committed
13 a very serious offense. After having been convicted of a
14 violent state offense, he then leaves the country while on
15 probation, for the promise of \$12,000, to smuggle a significant
16 quantity of a very dangerous controlled substance into the
17 United States.

18 He was not deterred by his prior conviction, or the
19 fact that he was under court supervision at the time to do
20 this. And for those reasons, we believe that a sentence within
21 the range of 87 to 108 months is appropriate in this case.

22 THE COURT: All right, thank you.

23 Mr. Dratel, do you have any additional comments for
24 the Court's consideration?

25 MR. DRATEL: Your Honor, I know the Court has -- we've

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1 put in a comprehensive submission, so I know the Court has read
2 that.

3 I just want to touch on some of what I think are the
4 important aspects of it. And I think, foremost, is Mr.
5 Arteaga's adjustment at MDC, which has really been
6 transformative. And he has -- and it's a poor environment for
7 this kind of transformation. Yet, he has done it with his own
8 personal commitment. His family has been very supportive. His
9 mother and aunt are here. I spoke to his girlfriend, who is
10 the mother of his two-year-old daughter this morning. She was
11 supposed to be here, I don't know, she is obviously delayed.
12 But the point is, his family is very supportive, remains
13 supportive, will be supportive.

14 And this has really been a 180-degree change in his
15 approach and attitude, even since the time that I have begun
16 representing him, going from someone who was resistant in many
17 ways to a lot of what was necessary to resolve the case, to
18 someone who has now affirmatively taken responsibility, not
19 only for his offense but, also, for his life in an ongoing way
20 in the future.

21 I think the ameliorative amendments that Mr. Howard
22 spoke of are important, not only in the context of the two
23 points but, also, what it means the context of sentencing
24 policy in the future. On the horizon, also, is the Smarter
25 Sentencing Act, which I don't think will be passed this year,

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1 more because of Congress' paralysis and the election year,
2 rather than a considered consensus that it is necessary.

3 Because I think we have polar opposites in terms of political
4 points of view that are both behind this legislation that,
5 unfortunately, will not be able to benefit Mr. Arteaga today.
6 I don't even know retroactively. But I think it is an
7 important aspect of what the Court ought to be considering in
8 the context of the future down the road, in other words the
9 length of Mr. Arteaga's sentence.

10 I think the disparities are important. The disparity,
11 not only in this case, but where people in which defendants,
12 co-defendants who are far more culpable in the context of the
13 larger organization and the larger conspiracy have received
14 sentences lower than what Mr. Arteaga is available to receive.
15 In the sense that we're locked into a 60-month mandatory
16 minimum. Some have received three years, whose organizational
17 capabilities and whose profit and whose responsibility is much
18 greater than Mr. Arteaga's. I think that is a factor. I think
19 that we have made the point about his criminal history
20 category, one conviction. And he knowledges, obviously, that
21 he was on supervision and all of that. But it does ratchet up
22 his criminal history score in a way that I think overstates it.

23 I think the equities and the numbers, both favor a
24 mandatory minimum sentence here, the 60 months. And there was
25 an article -- I was on trial for more than a month, just

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1 finished last week. But I was catching up on newspapers. I
2 came upon an article, after we had submitted our sentencing
3 memorandum, from the New York Times back in April. And it
4 reflects something that has also been released in May, which is
5 the Brooking Institution Report for its housing project. It
6 had some startling numbers that I think go towards, again, the
7 length of the sentence, and the future. The future for, not
8 only Mr. Arteaga, but his daughter. In this sense. In that
9 University of Washington study said that: Serving time reduced
10 men's hourly road wage by 11 percent, and annual employment by
11 nine weeks. More than half of inmates have minor children.
12 Their children are almost six times as likely to be expelled or
13 suspended from school. Family incomes fall 22 percent during
14 the years the fathers are incarcerated. These are numbers, but
15 there is human beings behind each one of those numbers. And I
16 think that the 60 months is sufficient for purposes of
17 deterrence, both specific and general. I think it's sufficient
18 with respect to recidivism, given the kind of change and
19 turn-around that Mr. Arteaga has undergone and continues to
20 undergo.

21 I don't think this is leniency in the sense of
22 60 months. I think it would be justice. I think it would be
23 wisdom. I think it would be recognition of where we're going
24 as a society in the context of punishment and sentencing.

25 Everybody talks about the problem of mass

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1 incarceration. And it has to be addressed, I think, defendant
2 by defendant, lawyer by lawyer, Judge, by judge. And it's been
3 recognized by presidents, by the attorney general, by the
4 Supreme Court justices. Even Congress, even though it can't
5 act, it recognizes it in the context of what has been passed
6 through committees. It's a challenge to all of us. And I
7 think Mr. Arteaga, himself, has begun to meet that challenge
8 and has accepted it. And I think that we also need to meet
9 that challenge in the context of not sentencing people to more
10 than necessary.

11 Here, I think the mandatory minimum of 60 months is
12 sufficient, but not greater than necessary, and is the
13 appropriate sentence for Mr. Arteaga.

14 Thank you, your Honor.

15 THE COURT: Thank you.

16 Mr. Arteaga, please rise.

17 Is there anything you would like to say on your own
18 behalf before the Court sentences you?

19 THE DEFENDANT: Yeah.

20 I wrote a speech, but I'm a bit nervous. Not sure
21 it's going to come out the way I wanted it to.

22 I stand before the Court today a rehabilitated person.
23 I have been incarcerated for the last 19 months, and instead of
24 watching time go by, I used the time to learn the errors of my
25 ways. I can stand before this Court and represent that I am no

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1 longer the person that was arrested two years ago.

2 Being young, and not having the guidance growing up, I
3 made decisions that were not in anyone's best interest, other
4 than my own.

5 I have learned to become a born-again Christian, that
6 I have to be accountable for my actions. And moving forward in
7 life, I will dedicate my heart and mind to raising my beautiful
8 daughter and become an asset to society, instead of a
9 liability. I apologize to the Court, the government, my
10 family, as well as your Honor, and all unknown victims of my
11 actions. I know actions speak louder than words, and although
12 I have a lot more I could say, I would rather show your Honor
13 than make statements that are untrue and false.

14 Thank you for considering my thoughts in imposing
15 sentence.

16 THE COURT: Thank you.

17 MR. DRATEL: Your Honor, may I add to that, you know,
18 even though we talked about a statement, Mr. Arteaga composed
19 that entirely on his own.

20 THE COURT: Thank you.

21 In accordance with the decision by the United States
22 Supreme Court in United States v. Booker, while the United
23 States Sentencing Guidelines are not mandatory, the Court
24 nonetheless must consult those guidelines and take them into
25 account when sentencing. Therefore, the Court has considered

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1 the findings of fact stated in the presentence report, as well
2 as the guidelines analysis and the recommendations contained
3 therein.

4 The Court has weighed its information along with the
5 factors listed in 18 U.S.C. Section 3553(a) in coming to its
6 final sentencing decision in this case.

7 Mr. Howard, I would ask you to confirm the government
8 has indicated that it agrees that the offense level should be
9 reduced by the two points.

10 MR. HOWARD: The government believes that a correct
11 guidelines calculation is at level 29, but that a sentence at
12 the equivalent of level 27 will be appropriate.

13 THE COURT: Because of the two points prospective
14 credit under the statute contemplated.

15 MR. HOWARD: Exactly, your Honor. Yes.

16 THE COURT: All right.

17 The Court adopts the factual recitation in the
18 presentence investigation report. Therefore, the Court finds
19 that under the guidelines, Mr. Arteaga's offense level amounts
20 to 29, and his criminal history category falls into
21 category III. In accordance with the government's
22 representation, the Court will adopt an offense level of 27,
23 giving Mr. Arteaga the two-point adjustment in light of the
24 government's policy on this matter, reflecting the legislation
25 which the government is supporting and which Congress is

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1 contemplating.

2 The recommended range of imprisonment for that offense
3 level and criminal history category is 87 to 108 months.

4 Mr. Arteaga pled guilty to one count of conspiracy to
5 distribute and possess with intent to distribute cocaine. The
6 probation office has recommended that the Court impose a
7 sentence; of 108 months, based on its computation of 29 offense
8 level and criminal history category III.

9 Subsection (A)(1) of 18 U.S.C. Section 3553 requires
10 that the Court take into consideration the nature and
11 circumstances of the offense, history and characteristics of
12 the defendant.

13 Subsection (A)(2) of 18 U.S.C. Section 3553 requires
14 that the Court consider the need for the sentence to promote
15 certain objectives of the criminal justice system, namely,
16 punishment, specific and general deterrence and rehabilitation
17 pursuant to Section 3553(A)(6). The Court is also directed to
18 consider the need to avoid unwarranted sentencing disparities
19 among defendants with similar records and similar offenses in
20 other cases, as well as in the case at hand.

21 Mr. Arteaga, please rise.

22 I have taken into account the nature and circumstances
23 of the offense, and the history and characteristics of the
24 defendant. And considering all of the factors listed in
25 18 U.S.C. Section 3553(A), the Court finds that a sentence of

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1 60 months imprisonment is reasonable and appropriate, in that
2 such a term is sufficient but not greater than necessary to
3 promote the proper objectives of sentencing.

4 In imposing this sentence, I have taken into account
5 the circumstances cited by defense relating to the defendant's
6 post-arrest rehabilitation and acceptance of responsibility.

7 I have also taken into account the sentences the Court
8 has imposed on other defendants in this case with circumstances
9 comparable to that of Mr. Arteaga. Specifically, the Court
10 sentenced Mr. Posada, whose guidelines range was 87 to
11 108 months, like that of Mr. Arteaga, to 60 months mandatory
12 minimum.

13 Upon release from imprisonment, Mr. Arteaga, you shall
14 be placed on supervised release for a term of three years.

15 I will not impose a fine, because the Court has
16 determined that you do not have the ability to pay such a fine.
17 However, you are ordered to pay to the United States a special
18 assessment of \$100, which shall be due immediately.

19 Mr. Howard, is there a forfeiture provision in this
20 case?

21 MR. HOWARD: Yes, your Honor, but the government is
22 not seeking forfeiture at this time.

23 THE COURT: Mr. Arteaga, you must comply with standard
24 conditions 1 through 13 of supervised release, and the
25 following mandatory conditions:

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1 You shall not commit another federal, state, or local
2 crime; you shall not illegally possess a controlled substance;
3 you shall not possess a firearm or destructive device.

4 You shall cooperate in the collection of DNA, as
5 directed by the probation officer.

6 The mandatory drug testing condition is suspended due
7 to the imposition of a special condition requiring drug
8 treatment and testing.

9 In addition, you shall obey the following special
10 conditions:

11 You shall participate in a program approved by the
12 United States Probation Office, which may include testing to
13 determine whether you have reverted to using drugs or alcohol.

14 The Court authorizes the release of available drug
15 treatment evaluations to the substance abuse treatment
16 provider, as approved by the probation officer.

17 You will be required to contribute to the costs of
18 services rendered as a co-payment, in an amount determined by
19 the probation officer, based on the ability to pay or the
20 availability third-party payment.

21 You shall submit your person, residence, place of
22 business, vehicle, or any other premises under your control to
23 a search on the basis that the probation officer has reasonable
24 belief that contraband or evidence of the violation of the
25 conditions of release may be found.

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1 The search must be conducted at a reasonable time and
2 in a reasonable manner. Failure to submit to search may be
3 grounds for revocation. You shall inform any other residents
4 that the premises may be subject to search pursuant to this
5 condition.

6 You shall provide the probation officer with any
7 requested financial information. You shall not incur any new
8 credit card charges, or open additional lines of credit,
9 without the approval of the probation officer, unless you are
10 in compliance with the installment payment schedule.

11 Mr. Arteaga, do you understand each of these
12 conditions?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You shall report to the nearest probation
15 office within 72 hours of release from custody.

16 The Court recommends that you be supervised by the
17 district of residence.

18 The sentence, as stated, is imposed.

19 Mr. Arteaga, to the extent you have a right to appeal
20 your sentence, and you're unable to pay the costs of an appeal,
21 you have the right to apply for leave to appeal in forma
22 pauperis, meaning as a poor person.

23 If you make such a request, the Clerk of Court must
24 immediately prepare and file a notice of appeal on your behalf.

25 Do you understand your right to appeal, to the extent

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1 that it may exist?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Mr. Howard, are there any remaining counts
4 or underlying indictments that need to be dismissed at this
5 time?

6 MR. HOWARD: Yes. At this time, the government would
7 move to dismiss all open underlying counts and indictments.

8 THE COURT: So ordered.

9 Mr. Dratel, is there anything else you would request?

10 MR. DRATEL: Yes, your Honor. If the Court could
11 recommend designation as close to the New York metropolitan
12 area as possible for purposes of keeping Mr. Arteaga close to
13 his family and, also, a recommendation for a drug program as
14 recommended in the presentence report.

15 THE COURT: The Court will so recommend.

16 MR. DRATEL: Thank you, your Honor.

17 THE COURT: If there is nothing else, I thank you,
18 have a good day and a good weekend.

19 MR. DRATEL: Thank you, your Honor.

20 THE COURT: You're welcome.

21 (Adjourned)